IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3709 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SARVAJANIK EDUCATION SOCIETY & 1 - Petitioner(s)
Versus
A. KAPADIA & 3 - Respondent(s)

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Appearance :
MS KJ BRAHMBHATT for Petitioner(s) : 1 - 2.
RULE SERVED for Respondent(s) : 1,
MR SP HASURKAR, AGP. for Respondent(s) : 3.
MR MUKUND M DESAI for Respondent(s) : 2,
MR JV JAPEE for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 07/07/2006

ORAL JUDGMENT

1 This petition under Article 226 of the Constitution of India is filed by petitioner No.1-Society, which is also registered as a Trust under the Bombay Public Trust Act, in the following circumstances.

2 Petitioner No.1-Trust is running Commerce College which is petitioner No.2 herein. It is an accepted fact that petitioner No.2-College is affiliated with respondent No.2 – University viz, South Gujarat University. On 22.9.1993 respondent No.4 was appointed as full time lecturer in subject of Accountancy with petitioner No.2-College subject to approval by respondent No.2.

3 On 28.12.1995, respondent No.3 issued an order whereunder appointment of respondent No.4 came to be disapproved, simultaneously approving appointment of one Smt. Aiswarya Rajiv Kulkarni who was also appointed as full time lecturer in Accountancy with petitioner No.2-College. The petitioners therefore made a representation seeking approval of the appointment of respondent No.4, but on the representation being rejected, a communication was forwarded to respondent No.4 intimating that his services would be terminated with effect from 18.9.1996. As required, respondent No.1 – Vice Chancellor of respondent No.2 – University was also intimated about the decision and his approval for termination of the services was sought. According to respondent No.1, the petitioner having not followed the prescribed procedure, the order of termination should not be

implemented and hence, once again the petitioners initiated action for relieving respondent No.4.

4 However, in the meantime the State Government had passed resolution No.NGC/1597/2112/KH dated 24.9.1997 and withdrawn the policy of 10% reduction qua academic posts in Universities and Educational Institutions, and therefore, the petitioners moved respondent No.3 on 27.11.1997 to accord approval in light of the aforesaid resolution dated 24.9.1997. On 13.2.1998 respondent No.3 communicated to the petitioners that resolution dated 24.9.1997 could not be applied in the case of respondent No.4 as respondent No.4 had been appointed at a point of time when policy of 10% reduction of academic staff was in force. It is this order which is under challenge alongwith order dated 11.2.1998 made by respondent No.1 disapproving the action of the petitioners in relieving respondent No.4 from service.

5 The following prayers are made in the petition :

> *"13. In the aforesaid premises the petitioners pray that :*
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> *A. Be pleased to admit this petition.*
>
> *B. Be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, direction or order under Article 226 of the Constitution of India against the respondent no.3 calling upon the respondent no.3 to approve the appointment of the respondent no.4 as the lecturer in Accountancy in the petitioner no.2 college and to release the grant towards*

the salary of the respondent no.4.

BB. Be pleased to issue an appropriate writ, order or direction under Article 226 of the Constitution of India against the respondent No.1 and further be pleased to quash and set aside the order dated 11/2/1998 passed by the respondent No.1.

C. Be pleased to grant the interim relief directing the respondent no.3 to grant the provisional approval to the appointment of the respondent no.4 as the lecturer in Accountancy and the petitioner no.2 college and release the grant towards his salary accruing month to month.

D. Be pleased to grant such other and further reliefs as may be deemed fit in the circumstances of the case and in the interst of justice."

6 Heard Ms.K.J. Brahmbhatt, learned Advocate for petitioners, Mr.M.M.Desai, learned Advocate for respondent Nos. 1 and 2 and Mr. S.P.Hasurkar, learned Assistant Government Pleader for respondent No.3. The learned Advocate for respondent Nos. 1 and 2 has in principle supported the plea of the petitioners. On behalf of the petitioners attention was invited to the decision in case of *Sonalben Vasudev Prasad Jani vs. Municipal Girls High School, 2001 (2) G.L.H. 783* to point out that identical issue came up before this Court involving similar controversy and this Court was pleased to allow the petition. It was further pointed out that the only difference being number and date of resolution and the percentage of reduction on the ground of financial constraint; that in the present case such percentage is pegged at 10% while in the case

before the Court resolution dated 30.11.2000 pegged the percentage at 20%.

7 Mr.Hasurkar , learned Assistant Government Pleader placed reliance on decision of Apex Court in the case of *The Union of India & Ors. vs. Shri Tejram Parashramji Bombhate & Ors. JT 1991(2) S.C. 572* to submit that no Court or Tribunal could compel the Government to change its policy involving expenditure. In other words, according to him, in a policy matter involving financial burden no directions could be issued. He, therefore, urged that the decision of learned Single Judge, before whom aforesaid Apex Court decision was not cited was not binding on this Court and in light of the aforesaid Apex Court decision this Court must make reference to a Larger Bench and not follow the decision of learned Single Judge. It was submitted that in a policy level decision of the Government no interference was called for, and it would not matter whether the policy was in relation to creation of new post or abolition of existing post, or reduction of existing post. That such matters would be totally within the domain of policy making decision of the Government and the Court should not entertain the petition. That such decisions were beyond the province of judicial review as the actions are administrative in nature based on exigency faced by the Government. When a policy level decision is made, in absence of any data with the Court which forms the basis for taking policy level decision the Court should desist from intervening. That financial constraint was one of the valid factors amongst many other factors which would go to enter the decision making process of the Government. Lastly, it was

submitted that the resolution dated 24.9.1997 could not be made applicable retrospectively and the same was prospective in nature.

8 In so far as Apex Court decision is concerned, no such wide proposition of law as is canvassed on behalf of respondent No.3 is laid down. The position in law is well settled that any decision, even of Apex Court, has to be read and understood and the ratio thereof culled out in context of the factual backdrop and the controversy brought before the Court. The facts of the case before the Apex Court would go to show that the Central Government had sanctioned and was running a Primary School to cater to the educational need of children of persons employed in the ordanance factory at Ambazari. The employees, of their own, commenced a secondary school and appointed the respondents as teachers in the Secondary School paying honorarium to such respondents and not full salary. In this context the respondents approached Central Administrative Tribunal seeking regularization of their services demanding equal pay for equal work. The Tribunal after hearing parties directed the Central Government to immediately assess the needs of the School to carry on its activities, including a secondary level school and create sufficient number of posts to be filled up on regular basis. The Apex Court while dealing with the appeal of Union of India in the aforesaid backdrop of facts and circumstances, held that there is no law requiring Central Government to sanction a Secondary School and if the Central Government has taken a decision not to involve itself in sanctioning and running schools beyond primary level such a policy level decision involving financial burden cannot be

challenged; and if challenged, the Government cannot be compelled to change its policy. Thus the Tribunal could not have issued such directions as it did. The observations on which reliance has been placed by Mr.Hasurkar are in light of the aforesaid factual scenario and it is not possible to treat the said observations as being applicable and binding in all circumstances.

9 This Court speaking through the learned Single Judge in the aforesaid decision in the case of *Sonalben Vasudev Prasad Jani vs. Municipal Girls High School, 2001 (2) G.L.H. 783* has laid down as follows :

> *"It is the moral and social obligation of the State to provide adequate number of teachers in the educational institution and all reasonable facility is required to be given. For want of teachers, the ultimate sufferers are the students. In my view, there are so many other Departments of the State, where policy of imposing financial cut as economy measure can be applied, but Education is such a field that it is required to be spared, as, on the ground of austerity or economy measure, Educational Institutions should not be compelled to impart its educational activity without sufficient number of teachers. The State Government unfortunately failed to carry out its moral and social obligations towards the society by adopting economy measures even in the case of recruitment of a teacher in an educational institution" xxx xxx " The facts of the case , therefore, clearly show that the State*

Government has completely failed to discharge its obligation. It is the duty of the State to see that the educational activities are required to be encouraged and whatever benefits are required to be given for that purpose, are required to be given and if there is any financial difficulty or any economy measure is required to be undertaken, there are so many other departments or subjects on which economy measure can be applied . I am therefore of the opinion that the resolution of the Education Department dated 30.11.2000 by which it has been decided not to give approval to fill up the available posts in the educational institution is absolutely arbitrary, discriminatory and contrary to public interest and interest of the educational institutions of the State as a whole. In the matter of recruitment of staff/teacher in the school or college, such imposition can never be imposed and if it is found that the recruitment is genuine, the State Government is bound to accord approval for recruitment of such staff in the educational institution. Only on the ground of economy measure, no educational institution should be compelled to keep any post vacant.

Teaching is the noblest of all avocations and hence, teachers, who shape the future of our children, need a better treatment. In our country, which is governed by Rule of law, our children, who are the future of this country, need cent percent education and literacy and opportunity to come up in life, and, therefore, the full

strength of teachers are required to be appointed, not the 80%, as propounded by the Government.

On the ground of economy, quality education is denied to the children due to non-availability of adequate number of teachers and the same can be termed as human rights violation of these school children.

Education is of basic importance. There is nothing which is of greater importance than education. The amount spent on education is nothing but an investment for the future of the country. Unless we can raise the educational standards, we can never advance as a Nation. Therefore, education should be given priority.

The specious plea of economy on the part of the Government in the impugned action shows the lack of enthusiasm on its part in the field of education.

In this unsavoury episode, the silent suffering spectators are the school children of impressionable age, who are not even represented before this Court either by their parents or some well-meaning non-governmental organisations who are prepared to espouse their cause. Even, there is violation of Article 21 of the Constitution of India, in as much as, the hapless school children studying in these schools are not imparted education with sufficient strength of teachers. It is needless to reiterate that right to life enshrined in Article 21 means something more than survival or nominal existence. It would, include all those aspects of life which go to make a man's life

meaningful, complete and worth living.

Right of every child to full development is treated as fundamental right. Similar is the case as regards right to education. In Miss. Mohini Jain v. State of Karnataka and others, AIR 1992 SC 1858, the Apex Court held as under :

“ ... ...

The “right to education”, therefore, is concomitant to the fundamental rights enshrined under Part III of the Constitution. The State is under a constitutional-mandate to provide educational institutions at all levels for the benefit of the citizens. The educational institutions must function to the best advantage of the citizens. Opportunity to acquire education cannot be confined to the richer section of the society.

... ...

It goes without saying that for the educational institutions to function to the best advantage of the citizens, full complement of teachers is absolutely necessary. In fact, it will be a pious obligation of the State to see that sufficient financial help is provided to an institution imparting education so that money invested for such activity will result in bringingout good citizens with proper knowledge and education”.

10 Ultimately the Court has quashed and set aside Government Resolution dated 30.11.2000 directing that financial cut, economic measure, or austerity measure should not be made applicable so

far as educational institutions are concerned, especially for the purpose of recruitment of teachers in the Educational Institutions.

11 Relating back to the facts of the present case it is apparent that respondent No.4 came to be appointed on 22.9.1993 and for a period of more than two years respondent No.3 did not initiate any action of approval or non-approval of the appointment, despite various communications from the petitioners to respondent No.3 authority. This becomes clear when one reads the reference column of communication dated 28.12.1995 which refers to at least three communications at an interval of two months each. What is more startling is that two persons were appointed simultaneously on 22.9.1993 as lecturers in subject of Accountancy and appointment of one has been sanctioned vide communication dated 28.12.1995 while that of respondent No.4 has been disapproved. The said order only states that appointment of respondent No.4 is not approved in light of resolution No.NGC : 1593 /2605/KH dated 3/8/1983 which requires that there should be 10% reduction.

12 As rightly pointed out on behalf of the petitioners vide resolution dated 24.9.1997 the policy of austerity by way of 10% reduction was required to be given up because the Government, after considering representations from various universities and students, realized that in the interest of the students, 10% reduction was not required to be continued. In other words the Government accepted the fact that in the field of education, in principle, there could be no such reduction in light of the interest of

students community at large. This accords in principle with the ratio laid down by this Court in case of *Sonalben Vasudev Prasad Jani (supra)*. This Court has stated the same thing which had already been acknowledged by the Government as far back as in 1997 vide its resolution dated 24.9.1997.

13 In the aforesaid facts and circumstances, the issue raised in the present petition stands concluded by the aforesaid judgment of this Court in the case of *Sonalben Vasudev Prasad Jani (supra)* and no distinguishing feature has been brought on record. The only limited issue that would survive thereafter is, whether the resolution of 1997 can be pressed into service as pleaded by learned Advocate for the petitioners or whether the same should be allowed to operate prospectively as contended by the learned Assistant Government Pleader.

14 It is not necessary to enter into any discussion as to whether the resolution should be applied prospectively or retrospectively in light of the fact that the principle enunciated in the said resolution has been laid down as legal proposition in the form of judgment of this Court which is binding on all the parties in the State of Gujarat. It is stated at the Bar that the aforesaid judgment of this Court has not been carried further. Therefore, whether the principle of the resolution is applied or the ratio of judgment of this Court, the end result is the same. The impugned communication dated 28.12.1995 issued by respondent No.3 in the form of order cannot be permitted to operate so far as the same does not approve the appointment of respondent No.4. Hence, to the said limited extent the said order is

quashed and set aside. As a consequence the communications dated 11.2.1998 & 13.2.1998 are also quashed and set aside. The petition is allowed accordingly.

15 Rule made absolute. There shall be no order as to costs.

(D.A.Mehta, J.)

m.m.bhatt